

ATTACHMENT 1K

EXAMPLES OF DOCUMENTS RELATING TO SUBPOENAS

1. **REQUEST FOR A SUBPOENA COMPLETED BY TRIAL ATTORNEY- page 2**
2. **NOTICE OF A REQUEST FOR A SUBPOENA ISSUED BY ALJ- page 3**
3. **COMPLETED SUBPOENA AD TESTIFICANDUM- page 4**
4. **COMPLETED SUBPOENA DUCES TECUM - pages 5-7**
5. **PETITION TO REVOKE SUBPOENAS (materiality and relevancy) -
pages 8-11**
6. **PETITION TO REVOKE SUBPOENAS (sections 2411.11 and 2423.7) - pages
12-14**

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
DALLAS REGION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C.

Respondent

and

Case No. DA-CA-99999

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 1289

Charging Party

REQUEST FOR SUBPOENAS

The Dallas Regional Director issued complaint and notice of hearing in the captioned case on this date. Please furnish the undersigned attorney 7 subpoena duces tecum and 7 subpoena ad testificandum forms to be served upon persons in accordance with 5 C.F.R. § 2423.28(d).

Respectfully submitted,

Dallas Regional Attorney
525 Griffin St., Suite 926, LB 107
Dallas, Texas 75202

Dated: May 16, 1997

DATE May 27, 1997

NOTICE

Enclosed herein are the subpoenas you requested in Case
No(s). DA-CA-99999

1. 7 Subpoenas Ad Testificandum
2. 7 Subpoenas Duces Tecum

5 C.F.R. § 2324.28(c) requires you to complete the specific information in the subpoena and to serve it.

5 C.F.R. § 2324.28(d) provides:

(d) *Service of subpoena.* A subpoena may be served by any person who is at least 18 years old and who is not a party to the proceeding. The person who served the subpoena must certify that he or she did so:

(1) By delivering it to the witness in person.

(2) By registered or certified mail, or

(3) By delivering the subpoena to the responsible person (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

SUBPOENA AD TESTIFICANDUM

**UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001**

TO: Jane Jones
1243 Ash Circle
Fire Lake, AZ 66666

Request therefor having been duly made by John Testimony, whose address is 1244 Speer Blvd., Suite 100, Denver, CO 80204.

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR before an Administrative Law Judge of the Federal Labor Relations Authority, at the Doubletree Hotel in the City of Albuquerque, New Mexico on the 7th day of August, 1997, at 9:00 o'clock a.m. of that day, to testify in the Matter of Department of the Interior, Bureau of Water Resources, Regional Aquifer Treatment--Western Aquifer Division, Desert Falls, Arizona and Western Association of Treatment Engineers and Researchers, Independent, Case No. DE-CA-70700.



In testimony whereof, the seal of the FEDERAL LABOR RELATIONS AUTHORITY is affixed hereto and the undersigned has hereunto set his hand and authorized the issuance hereof.

(Signature)

Administrative Law Judge
(Title)

NOTE:

5 C.F.R. § 2423.28(d) sets forth the procedures for serving this subpoena.

5 C.F.R. § 2423.28(e) sets forth the procedures for filing a petition to revoke this subpoena.

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

TO: P.U. Bosse, Regional Director
Bureau of Water Resources
Regional Aquifer Treatment
Western Aquifer Division
1000 Snake Tongue Lane
Fire Lake, AZ 66666

Request therefor having been duly made by John Testimony, whose address is 1244 Speer Blvd., Suite 100, Denver, CO 80204.

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR before an Administrative Law Judge of the Federal Labor Relations Authority, at the Doubletree Hotel in the City of Albuquerque, New Mexico on the 7th day of August, 1997, at 9:00 o'clock a.m. of that day, to testify in the Matter of Department of the Interior, Bureau of Water Resources, Regional Aquifer Treatment--Western Aquifer Division, Desert Falls, Arizona and Western Association of Treatment Engineers and Researchers, Independent, Case No. DE-CA-70700.

AND YOU ARE HEREBY REQUIRED to bring with you and produce at said time and place the following books, records, correspondence and documents:
SEE ATTACHMENT



In testimony whereof, the seal of the FEDERAL LABOR RELATIONS AUTHORITY is affixed hereto and the undersigned has hereunto set his hand and authorized the issuance hereof.

(Signature)

Administrative Law Judge
(Title)

NOTE:

5 U.S.C. § 7132 provides:

No subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

5 C.F.R. § 2423.28(d) sets forth the procedures for serving this subpoena.

5 C.F.R. § 2423.28(e) sets forth the procedures for filing a petition to revoke this subpoena.

ATTACHMENT

1. Any and all memoranda, letters or other correspondence from RAT-WAD to BWR and/or S.N. Nosey requesting or initiating an investigation of Pat Creek;
2. Nosey's report of the investigation of Pat Creek, including but not limited to any report, memorandum or summary prepared by Nosey of the May 5, 1997 meeting with Pat Creek;
3. All materials prepared by RAT-WAD or in the possession of RAT-WAD relating to any OMB Circular A-76 study and/or other reports or studies concerning the contracting out, merger and/or transfer of RAT-WAD functions;
4. Complete copies of Pat Creek's appraisals for the last 5 years;
5. Pat Creek's OPF and 7B personnel file;
6. Copies of the May 9, 1997 proposal to suspend Pat Creek and the May 20, 1997 final decision;
7. Copies of all proposed and/or final disciplinary actions issued to Pat Creek during his employment with RAT-WAD, including but not limited to the material comprising the "prior disciplinary record" referenced in the May 20, 1997 decision to suspend;
8. All DOI, BWR and/or RAT-WAD instructions covering disciplinary actions including the table of penalties;
9. The DOI/BWR/RAT-WAD Code of Conduct and any DOI, BWR and/or RAT-WAD instructions relative thereto;
10. Copies of all documents relied on by RAT-WAD in issuing the May 20, 1997 suspension to Pat Creek including but not limited to any and all complaints, letters, correspondence or other memoranda received by RAT-WAD concerning Creek's alleged recommendations to use specific contractors;
11. Copies of any and all discipline issued to other employees of RAT-WAD, including supervisors, management officials or bargaining unit employees, for violations of the Code of Conduct from 1990 to the present;
12. Any documentation submitted by Creek listing "contractors with whom [he] has financial or familial relationships" under the Code of Conduct.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
DALLAS REGION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C.

Respondent

and

Case No. DA-CA-99999

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 1289

Charging Party

PETITION TO REVOKE SUBPOENAS

Pursuant to section 2423.28(e) of the Authority's Regulations, Counsel for the General Counsel requests that the subpoenas ad testificandum and duces tecum served on Joseph Arbitrary on July 21, 1997 be revoked. In support of the Petition to Revoke, Counsel for the General Counsel shows below that neither Arbitrator Arbitrary's testimony nor the documents that are the subject of the subpoena is material and relevant to the matters in question in this proceeding.

Respondent's representative served a subpoena ad testificandum and a subpoena duces tecum upon the person of Joseph Arbitrary, Arbitrator, 2655 Award Drive, Boulder, Colorado 80303, ordering his personal appearance at a hearing to be conducted in the captioned case on August 2, 1997 and that he produce certain documents at the hearing. The documents sought are "any records in [the possession of Joseph Arbitrary] reflecting all his communications with the Union at EEOC, including

but not limited to correspondence, telephone records and notes.” Respondent seeks the personal appearance of Joseph Arbitrary and the documents to “prove that Arbitrary was not unbiased as a putative arbitrator, but had a lucrative interest in matters between EEOC and the Union, thus he was not an arbitrator under the statute.”

Section 2423.28(e)(2) of the Authority’s Regulations requires that the subpoenas ad testificandum and duces tecum be revoked because the testimony of Joseph Arbitrary or documentary evidence in his possession is not “material and relevant” to the instant proceedings. In this regard, the Complaint in the captioned case alleges a violation of Section 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (Statute), because the Respondent has refused to comply with an Arbitrator’s award. Respondent seeks the personal appearance of Joseph Arbitrary, Arbitrator, and the documents to “prove that Arbitrary was not unbiased as a putative arbitrator, but had a lucrative interest in matters between EEOC and the Union, thus he was not an arbitrator under the statute.” Such matters should have been raised before the Arbitrator at the arbitrated hearing or before the proper forum as required by Section 7121(f) of the Statute, under which the underlying grievance in this case falls. Section 7121(f) states that “in matters covered under section 4303 ... of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board.” Respondent did not raise this issue before the Arbitrator at the arbitrated hearing which led to the arbitrated decision in this case, nor did Respondent raise this issue before the United States Court of Appeals for the Federal

Circuit. Furthermore, Respondent's assertion that the Arbitrator was improperly selected unilaterally by the Union was considered and rejected by the Authority in Equal Employment Opportunity Commission, 48 FLRA 822 (1993), a case involving a different arbitrated grievance. Thus, the information which is the subject of the subpoenas--the documents in Joseph Arbitrary's and his personal appearance to give testimony--are not material relevant to the matter upon which a hearing will be held on August 2, 1997.

Accordingly, Counsel for the General Counsel requests that the subpoenas served on Joseph Arbitrary on July 24, 1997, be revoked.

Respectfully submitted,

Counsel for the General Counsel
Dallas Regional Office
525 Griffin St., Suite 926, LB 107
Dallas, Texas 75202

Dated: July 24, 1997

CERTIFICATE OF SERVICE
Case No. DA-CA-99999

I hereby certify that a copy of the Petition to Revoke Subpoenas submitted by Charlene A. Hanson, Counsel for the General Counsel, was sent to the following parties by certified mail.

Samuel A. Chaitovitz
Chief Administrative Law Judge
Federal Labor Relations Authority
607 14th Street, N.W., 4th Floor
Washington, D.C. 20424-0000

Joseph Arbitrary
Arbitrator
6th Floor, Two Lakeway Center
3850 North Causeway Boulevard
Metairie, Louisiana 70002

John L. Score
Attorney
Equal Employment Opportunity Commission
1801 L Street NW
Washington, D.C. 20507

David L. Feder
Deputy General Counsel
Office of the General Counsel
Federal Labor Relations Authority
607 14th Street, N.W., 2nd Floor
Washington, D.C. 20424-0001

Dated at Dallas, Texas this 24th day of July 1997.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS
ATLANTA REGION**

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL 1292

Respondent

and

Case No. AT-CO-99999

PHIL A. MINT

Charging Party

PETITION TO REVOKE SUBPOENAS

Pursuant to section 2423.28(e) of the Authority's Regulations, Counsel for the General Counsel requests that the subpoenas ad testificandum and duces tecum served on Linda Jones on September 30, 1997 be revoked. In support of the Petition to Revoke, Counsel for the General Counsel relies on sections 2411.11 and 2423.7(d) of the Authority's regulations.

Section 2411.11 requires that the General Counsel's written consent be obtained when an employee of the General Counsel is asked to testify or produce documents concerning any matter pending in an administrative proceeding when that information was obtained by the employee in the official capacity as an Authority agent. The attorney for the Union in this matter has failed to comply with this regulatory requirement. The General Counsel's permission has not been requested for Ms. Jones to testify, and produce documents, at the hearing in the captioned matter.

Moreover, section 2423.7(d) of the Authority's Regulations provides that the purposes and policies underlying the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information from all potential sources during the course of investigation. It is the policy of the Authority and the General Counsel to protect the substance of information submitted or obtained during an investigation as a means of assuring the Authority's and the General Counsel's continuing ability to obtain all relevant information. It has been the policy of the Office of the General Counsel since its inception not to permit Authority agents to testify concerning matters coming before them in their official capacity. The highly sensitive and delicate role of Authority agents in investigating and prosecuting cases would be seriously compromised if it were possible that they could become material witnesses in administrative proceedings with respect to matters which were investigated and decided as unfair labor practice charges.

The Union's subpoenas ad testificandum and duces tecum require Authority Agent Linda Jones to testify concerning her contacts that occurred during the investigation in the captioned case and a companion case AT-CA-9999, and also to produce documents contained in these case files. Any information obtained by Ms. Jones regarding the processing of these cases came to her in her official capacity as an Authority Agent while processing unfair labor practice charges.

For the above-stated reasons, Counsel for the General Counsel requests that the subpoenas served on Linda Jones on September 30, 1997 be revoked.

Respectfully submitted,

Counsel for the General Counsel
Marquis Two Tower, Suite 701
Atlanta Regional Office
285 Peachtree Center Avenue
Atlanta, Georgia 30303-1270